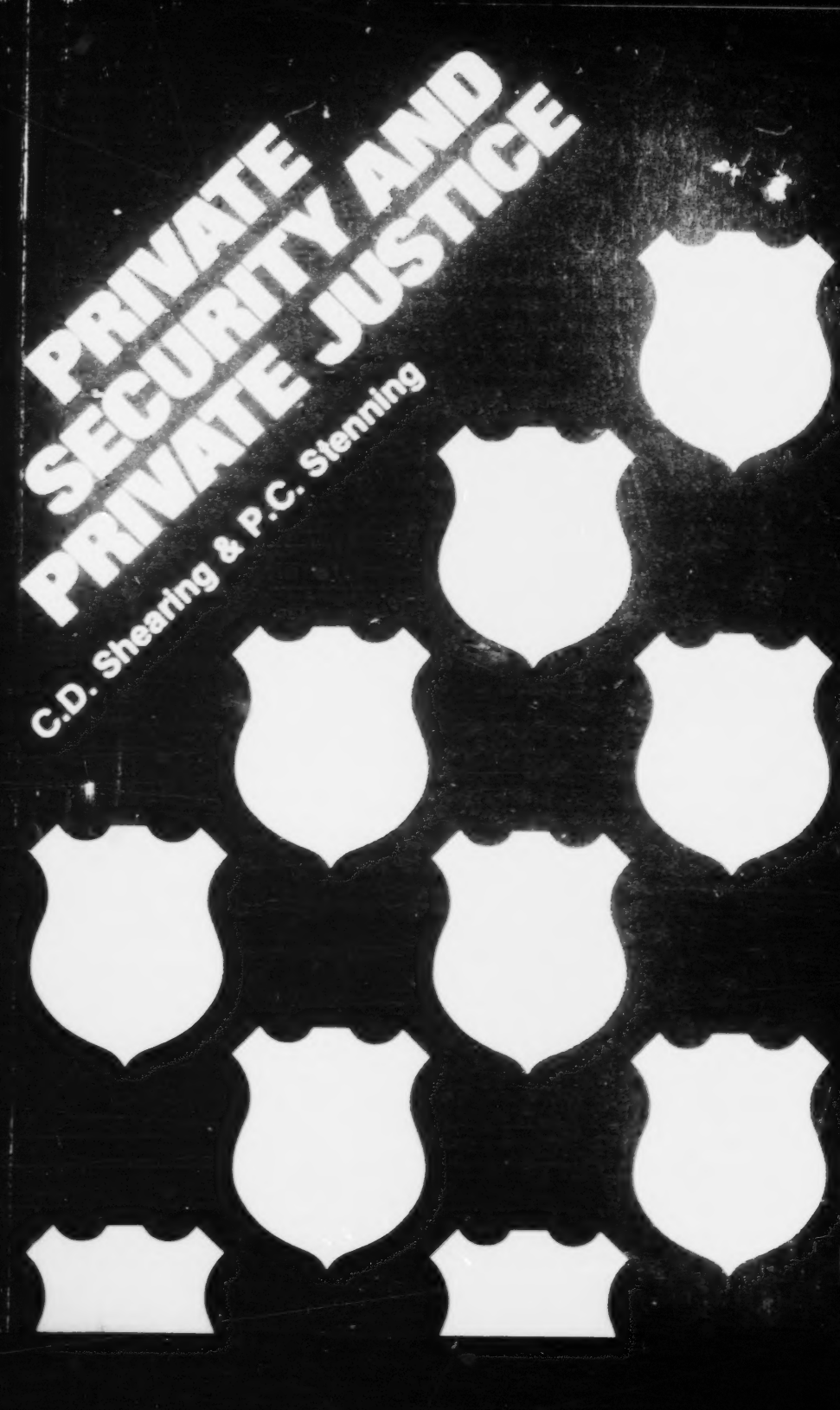


PRIVATE AND SECURITY AND PRIVATE JUSTICE

C.D. Shearing & P.C. Stenning



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**PRIVATE SECURITY AND PRIVATE JUSTICE:
THE CHALLENGE OF THE 80s**



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A Review of Policy Issues

**C.D. Shearing
&
P.C. Stenning**

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TABLE OF CONTENTS

	Foreword	vii
	Avant-propos	ix
	Introduction	1
Chapter 1	Background	3
	Growth of Private Security	3
	Private Security's Role	7
	Victim-Oriented Justice	8
Chapter 2	Policy Issues	11
	Interchange of Personnel and Loss of Public Resources	11
	Information Exchange	12
	Other Police/Private Security Co-operation	15
	Powers of Private Security Personnel	19
	Private Security in the Workplace	26
	(a) Private Security Methods in the Workplace	26
	(i) Information gathering and auditing	26
	(ii) Surveillance	31
	(iii) Discipline: models of private justice	31
	(b) Private Security's Relationship to Management	39
	The Protection of Privacy	61

Accountability of Private Security	44
Conclusions	53
Bibliography	57
Members of the Institute	
Institute Management	
Publications Available	

FOREWORD

Canada, like other countries of the Western world, has seen in recent years a significant increase in private security systems that have been only dimly recognized by governments and the public as a new form of policing. In effect, it is a shift of police work from the public to the private sector. To a degree, it has moved the control of some aspects of our protective and justice system away from the state and into the hands of business. The reasons for the development are grounded in the fabric of contemporary society, especially in the world of industry and commerce. However, even governments in Canada have found it desirable to join those using this non-governmental form of protection. Today the number of private security guards and investigators in Canada is about the same as the number of public police officers.

As the authors of this study demonstrate, the development of private security raises new questions of public policy that will have to receive the attention of governments, but especially of the public that is directly and specifically involved. What is the relationship between private justice and public justice? What are the risks of invasions of individual liberties by private security forces and the processes of private justice? To what extent should governments, federal or provincial, regulate these activities?

The authors show that, in recognizing the existence of questions of public policy, it would be a mistake to assume that private justice should be viewed in negative terms. Not only is it a response to real problems, but it also focuses on prevention and on the victim of

violations to a degree that our public criminal justice system has not achieved. As the study says, the nature of private justice "may very well represent an important, but hitherto unrecognized, reform movement through which publicly advocated reforms have found their expression in the private, rather than the public, sphere".

This study will promote a greater understanding of a development that has received little public attention. It is hoped that such understanding and a more active discussion of the issues involved will lead to appropriate decisions on policy.

The preparation of this paper was made possible by a generous grant from the Department of the Solicitor General of Canada. The views expressed are, of course, those of the authors and not of either the Ministry or the Institute.

Gordon Robertson

President

October 1983

AVANT-PROPOS

Au cours des quelques dernières années, au Canada, tout comme dans bien d'autres pays occidentaux, on a vu augmenter de façon importante les systèmes de protection privés, que les gouvernements et le public ont du mal à accepter comme une nouvelle forme de police. En fait, il s'agit du passage du travail de police du secteur public au secteur privé. Dans une certaine mesure, ceci a retiré des responsabilités de l'Etat le contrôle de certains aspects de notre système de protection et de justice, le mettant entre les mains du monde des affaires. Il ne faut pas chercher bien loin les raisons de ce développement, elles font partie intégrante de notre société contemporaine, surtout du monde de l'industrie et du commerce. Toutefois, même les gouvernements du Canada pensent qu'il est souhaitable de ce joindre à ceux qui favorisent ce type de protection non gouvernementale. De nos jours, le nombre de gardes privés et de détectives privés au Canada est presque aussi important que celui des agents de police publics.

Comme le démontrent les auteurs de cette étude, la popularité de la protection privée a soulevé de nouvelles questions concernant l'ordre public qui méritent de retenir l'attention des gouvernements, surtout celles qui impliquent directement et particulièrement le public. Quelle relation y a-t-il entre la justice privée et la justice publique? Quels risques courons-nous de voir nos libertés individuelles violées par des forces de l'ordre privées et par le processus d'une justice privée? Jusqu'à quel point les gouvernements, fédéral et provinciaux, devraient-ils contrôler ces activités?

Les auteurs montrent que, tout en reconnaissant l'existence des questions concernant l'ordre public, il serait erroné de considérer la justice privée d'un point de vue négatif. Car non seulement celle-ci représente une solution aux vrais problèmes, mais encore elle insiste sur le côté préventif et se penche sur le cas des victimes d'infractions, comme jamais ne l'a fait notre système de justice criminelle. Tel qu'il est dit dans cette étude, la nature même de la justice privée " risque fort de représenter un mouvement de réforme, important bien que non encore reconnu, grâce auquel certaines réformes préconisées publiquement ont trouvé un moyen d'expression dans le domaine privé plutôt que dans le domaine public ".

Cette étude permettra de mieux comprendre ce concept dont on a peu parlé jusqu'ici. Il est à souhaiter que cette prise de conscience et les discussions actives qui s'ensuivront sur les questions en cause permettront aux responsables de prendre les décisions adéquates concernant l'ordre public.

Cette communication a été préparée grâce à une bourse généreuse de la part du Ministère du Solliciteur général du Canada. Les opinions exprimées ici sont, bien sûr, celles des auteurs et non pas celles du Ministère ou de l'Institut.

Gordon Robertson

Président

Octobre 1983

"Having been privileged to attend a training session on 'gate-keeping duties' at [a large private security company's] highly sophisticated training centre, I now know, as opposed to suspect, that there can be rather more to this function than preventing the gates from being stolen! So it appears with most guard and patrol services provided on a commercial basis. What is sold seems consistently more than meets the eye."

- Chief Inspector Sydney Preece,
Scotland Yard.



INTRODUCTION

Although private security has recently been recognized as an important security force, this recognition has been slow in coming. Canadians regularly come into contact with private security, yet they seldom pause to think about its significance. Despite the abundant evidence, few Canadians are aware that the burgeoning of private security and, more generally, the private justice systems of which it is a part, have brought about major changes in social control. Private security represents a quiet revolution in policing as significant for order maintenance as the nineteenth century changes that created the public police as we know them today.

The changes in policing that are resulting from the emergence of private security raise ethical and political questions that governments will be faced with during the 1980s and '90s. In this paper our purpose is to anticipate these questions, thereby assisting policy-makers within governments to engage in a process of policy formation with respect to private security before they are required to respond to the problems this form of policing will undoubtedly precipitate.

We shall begin with a brief review of the developments in modern private security and their significance from a policy perspective. This will be followed by a discussion of the policy issues that we believe are most likely to emerge as political issues over the next two decades. We will conclude by outlining, in general terms, the strategies that might be employed to move beyond this paper to the development of a considered policy with respect to private security and private justice.

In preparing this paper we have based our analysis on a review of the growing body of existing research undertaken within Canada and elsewhere (Shearing and Stenning, 1981). In the interests of readability we have eschewed an academic style and have limited references to the text itself to a minimum. We have, however, listed the sources we have relied upon in the bibliography provided at the end of the paper.

Chapter 1

BACKGROUND

Growth of Private Security

In the most general terms, private security refers to the process whereby individuals and agencies (be they governments or corporations) make use of the age-old prerogative of self-help to protect their belongings and persons. The emergence of modern private security reflects the fact that institutions are increasingly exercising this right to self-help by developing formal systems of social control that are independent of, and outside of, the public criminal justice system. The extent to which this has occurred can be measured by the number of specialized persons who have been employed to do policing as part of these private systems of justice. That is, the number of security guards and private investigators.

At present the number of private security guards and investigators in Canada is about the same as the number of public police officers. While growth rates are exceedingly difficult to estimate, because of the changes in definitions of statistical categories at different times, it appears that specialized private security has been growing more rapidly than both the population and the public police. Although there is some evidence to suggest that this growth rate has levelled off over the past few years, figures available for 1971 and 1975 indicate that specialized private security was still growing faster than the public police. The following table shows these trends. While more recent figures are unavailable, it seems likely that in the years ahead private security will continue to expand at a time when the public

PRIVATE SECURITY PERSONNEL: CANADA, 1971-75

	<u>1971*</u>	<u>1975**</u>	<u>Change (per cent)</u>	
			<u>1971-75</u>	<u>Yearly Average</u>
Total security personnel	89 734	115 443	28.7	6.5
Total public security	53 209	67 663	27.0	6.2
Police strength	39 724	51 243	30.0	6.6
Government guards	13 485	16 420	21.8	5.0
Total private security	36 525	47 780	30.8	6.9
Types:				
Guards	33 430	46 060	37.8	8.3
Investigators	3 295	1 720	-91.7	-15.0
Organization:***				
In-house	25 200	28 756	14.1	3.4
Contract	11 525	19 024	65.1	13.3
Ratio police/private security	1.09:1	1.07:1		
Ratio in-house/contract	2.2:1	3:2		

* 1971 figures adapted from Farnell and Shearing (1977)

** 1975 figures adapted from Friendly (1980)

*** See definitions on p. 6

FROM: Shearing and Stenning (1981)

police strength seems likely to remain stable and perhaps even decline slightly. It thus seems probable that the 1980s will see private security outstrip the public police in size.

This expansion of private security represents both a growth in the amount of formal policing taking place and, within the context of this expanded security, a shift in the context of policing from the criminal justice system to other institutions. Although governments in Canada are major users of private security, this form of policing is primarily a corporate phenomenon. Consequently the move from public to private policing represents a significant shift in the control of policing from the public to the private sector. As private security systems, like the public police, function as gatekeepers to more general systems of justice (in which the problems they identify are resolved), the development of private security points to a move from public to private justice. It is these shifts in the control of policing and justice, away from criminal justice into the hands of business (in particular big business) that are the primary source of the policy issues relating to social control that governments will come face-to-face with between now and the end of the 1980s.

These shifts in the control of policing and justice are not limited to Canada: they have been occurring throughout the Western world. Certainly this is true both of Britain and the United States where there are figures comparable to those available in Canada. Private security and private justice, however, are not only international in this sense. They are also international in the more significant sense that the corporations that control both in-house and contract security are frequently international in scope. In Canada, this international character is particularly significant because it means that private security in Canada tends to be controlled by foreign companies. This is equally true in the case of the contract security industry, which is overwhelmingly in the hands of American-owned security companies, whose policies are, in large measure, determined within corporate board-rooms outside Canada. As control of policing has traditionally been thought of as a sine qua non of sovereignty, this raises questions about Canadian sovereignty at least as important as those raised more generally with respect to the foreign ownership of Canadian resources.

The corporate nature of private justice is reflected in the structure of private security. At the most general level, private security persons can be classified as either 'in-house' or 'contract'. 'Contract security' refers to corporations that are engaged in the business of selling security services to clients for hire. 'In-house security', as the name implies, refers to the internal security of corporations and other institutions. In both forms of security, multinational companies predominate.

Before we conclude our discussion of the growth of private security, a note about two further considerations, costs and hardware, is in order. The question of cost is especially important as, in an age of increasing concern over government spending, it is likely to be an important factor in determining the subsequent growth rates of public police and private security. The past several decades have witnessed an enormous growth in the cost of criminal justice generally and in public policing in particular. As a result, in 1971, at a time when Canadian statistics indicated that private security slightly outnumbered the public police (by a ratio of 1.09 to 1) the total cost of private security was estimated at less than half the cost of the public police (\$255 million as compared with \$647 million). This kind of cost comparison will undoubtedly be an important factor in the distribution of societal resources between public and private policing. Put more bluntly, the public police may well be "pricing themselves out of the market".

We have, in our discussion so far, focused our attention on manned private security. Besides manned security, however, there is an enormous hardware component to private security, in the form of safes and locks as well as detection and surveillance equipment. While information on this aspect of private security is not readily available as it is for manned security, every indication suggests that it is just as important and has been growing as fast as, if not faster than, the manned sector. Since much of the security hardware presently available, and in the development stage, provides an alternative to human labour, it serves to broaden the scope of the policing undertaken by private security. Thus, when this aspect of private security is considered in conjunction with manned security, it suggests an even more profound shift in the organization of policing from the public to the private sector.

Private Security's Role

The most visible aspects of private security are the persons and equipment used to provide routine surveillance and control of access to residences and businesses. This 'watch' function is among the oldest policing functions, with a history that extends back to a time well before the emergence of the modern public police. It has traditionally been performed by patrolmen who walk a beat and, along with the stationary watch, is one of the most common functions performed by private security. In its performance of these functions, private security is reminiscent of the traditional 'bobby', and like the 'bobby', most security persons perform this function on foot.

In addition to this patrol function, private security fulfills a great number of investigative functions, of which the most common is the investigation of customers and employees for offences against institutional interests. Apart from these, there are other less common, but nonetheless important, security functions such as industrial espionage. Over and above these investigative functions, there are other supervisory and design functions which are performed by security managers and security consultants.

These functions of private security are very similar in scope (if not in the emphasis accorded to each) to the functions performed by the public police. In performing them, however, the police and private security are guided by very different objectives; for while the public police are expected to act in the public interest, private security is expected to act in the private interests of its clients. This contrast between public and private interests finds its expression in a shift in focus away from a concern with 'crime' (which is by definition an offence against the public interest) to a concern with 'loss'. The significance of this shift is three-fold. First, the category of 'loss' is a much broader category, which includes most of what would normally be regarded as crime and much more besides (e.g., alcoholism, absenteeism). Secondly, it focuses the security function squarely on private interests, as loss clearly and unambiguously directs attention to the protection of assets and, more specifically, to the enhancement of profit. Thirdly, it serves to redirect the security focus from a concern with detection and apprehension of trouble-makers to an emphasis on

prevention,—a redirection that serves to bring modern policing more closely in line with the ideals Sir Robert Peel had in mind when he established the modern public police. One of the reasons that private security's attention can be directed successfully to prevention is that within institutions, in particular business organizations, security forces usually have access to an inventory of the assets they are required to protect. This enables them to measure, more accurately than the public police can ever hope to, the effectiveness of alternative control measures.

It is these features of private security that lie at the root of the policy issues that will confront governments in Canada over the next decade, as the full impact of the changes wrought by the emergence of private justice eventually become clear. These issues will present politicians with problems that are substantially different from those they have become accustomed to dealing with in response to criminal justice. They will thus require the development of new modes of thought that are appropriate to the changing reality of policing. In particular there will be two general classes of issues that will have to be addressed, namely, those having to do with the interface between private justice and public justice, and those related to the possibility of invasions of individual liberties stemming from the activities of private security and the processes of private justice. We will deal with these two general issues in the context of the specific policy areas identified below.

Victim-Oriented Justice

The relevance of private security and private justice to public policy can perhaps be most readily illustrated by noting their significance for a policy issue of current concern, namely, the situation of victims of crime. Both in Canada and the United States there is at present considerable public concern with the plight of victims, in particular the insensitivity of the criminal justice process to their needs. More specifically, it has been argued that the victim is the most neglected participant in the criminal justice process, despite the fact that it is an injury incurred by a victim that typically initiates the criminal justice process. These concerns have resulted in policy initiatives to bring the

victim back into the process, by according him/her greater significance. What has not been sufficiently appreciated in these attempts at reform, however, is that the victim's neglect within the criminal justice process is not simply a result of minor deficiencies in this process, but arises from its most fundamental features. Criminal justice is a process which serves to transform a dispute between two private parties into a dispute between one of them and the Crown. This transformation, which is accomplished by defining the wrong involved as a 'crime', has the corollary effect of transforming the role of the person wronged from that of a victim to that of a witness to the victimization of the Crown. Furthermore, the Crown, as the new victim, acquires control over the case, with the power to decide whether the case should be pursued and what punishment should be sought to recompense the wrong. This transposition of one victim for another is central to our system of criminal justice because it is the process which serves to ensure that, within criminal justice, it is the public interest, rather than the private interest, which takes precedence.

This feature of criminal justice, however, places fundamental limits on the extent to which it will be possible to introduce reforms into criminal justice, which will adequately address the legitimate concerns of victims without introducing into the process tensions and contradictions which may threaten its integrity. In view of this, governments concerned with responding to the concerns of victims should perhaps look more closely at the private justice systems that have emerged alongside private security. These systems represent a response that has already been taken by institutional victims independently of, and prior to, reform within criminal justice, to create new systems of justice that are more responsive to their needs as victims. This response has been strikingly successful in many ways. For, unlike criminal justice, which is essentially offender-oriented, private justice is above all a victim-oriented justice system, run by and for victims, in which the concerns of the victim—in particular the institutional victim—are given priority over the concerns of the state.

Given this characterization of private justice, it follows that if governments are serious in their concern for victims, they will be well advised to examine very carefully what victims are doing for

themselves. This is so for two reasons. First, because a good way to learn about what victims want is to see what they do for themselves when they create their own justice systems. Secondly, it offers the opportunity to examine empirically the implications for the public interest when victims take control of the justice process and replace the public interest with more localized private concerns.

Interchange of Personnel and Loss of Public Resources

The relationships which private security has with the public police are many and varied. One of the most important factors which influences these relationships is the substantial interchange of personnel between the public police and private security. Existing research in Britain, Canada and the United States indicates that a sizeable number of positions within private security, particularly in the higher echelons, are filled by ex-police officers. At the more junior levels, there is some evidence to suggest that private security is seen as a useful stepping-stone to a job in the public police.

The reason private security attracts so many of its security managers and supervisory personnel from the ranks of ex-police personnel is not hard to find; it is almost certainly a result of the very advantageous retirement and pension benefits enjoyed by many public police personnel which, based as they are primarily on years of service rather than age, allow policemen to retire almost at full pension well before the end of their natural working lives. Under these circumstances, it is hardly surprising that private security is viewed as an attractive pasture in which a trained police officer can put his experience and training in law enforcement and crime prevention to productive use during the remaining years of his working life. In fact, many of the smaller contract security-guard and investigation agencies in Canada have been started up and are now run by ex-police officers seeking a new outlet for their skills. Apart from the retirement

benefits we have mentioned, the extremely limited promotional opportunities within the public police forces may also be cited as an incentive to police personnel to leave the public police and either start up their own businesses or join established contract or in-house forces in managerial or supervisory positions.

From the point of view of public policy, there are two consequences that are of particular relevance. The first has to do with the loss of resources by the public policing sector to the private sector. The inevitable consequence of this loss is that the substantial public investment in the training and experience of public police officers is increasingly benefitting private rather than public interests. We still do not know enough about this 'blue drain' to predict with certainty what its effects will be. But given the attractiveness of positions within private security, both with respect to level of responsibility and salary, public police organizations can be expected to find it increasingly difficult to retain as senior officers talented persons in whom they have invested much in career development. If this problem were to become widespread, the consequences for the public police could be very serious indeed. For an organization which cannot attract and retain good personnel at senior management levels, cannot remain an effective organization for long. Further deterioration in public police effectiveness could, in turn, be expected to stimulate greater investment in private security, creating an acceleration in the trend from public to private policing that would be hard to reverse.

Information Exchange

The second policy issue relevant to the interface between the public police and private security is far more immediate and more consequential and has to do with the sharing of information made possible by the 'old boy networks' that have been developed through the movement of police personnel into private security positions. It is, of course, very difficult to obtain incontrovertible evidence that this network enables private security persons to obtain confidential information available to police officers, as the courts in Canada have suggested that unauthorized divulgence of official information by police personnel could constitute an offence under the Criminal Code (s. 11,

breach of trust by a public officer), as well as an offence under a provincial Police Act and an offence against police disciplinary regulations (R. v. Chapman and Grange (1972) 20 C.R.N.S. 141). Our own research on private security, however, has revealed that private security persons themselves indicate that as a matter of routine, they have considerable access to confidential police information through their 'old boy' contacts. Indeed, some executives of contract security firms have gone so far as to maintain that they could not remain in business if they did not have regular access to confidential police information. This kind of evidence has frequently been denied by police officers to whom we have presented it, who have pointed out that security persons may be inclined to make such claims to enhance their status and importance in our eyes. Alternatively, it has been suggested that even if this information sharing once existed, procedures have now been tightened so as to eliminate it. These responses may, of course, themselves be self-serving. We are more inclined to give credence to the position put to us recently by a senior and widely respected Canadian police official who, in a frank commentary on the effects of 'old boy networks', had this to say:

Well, you have to use common sense in answering. We frown on it, but it happens. How can you stop someone talking to an old friend? If you were a friend of mine and had been with the force for ten years and had gone into a security job when you retired from the force, and you called me up and asked for some information, do you think I wouldn't give it to you? We have recently charged a police officer for releasing information to a private security employee, and we are hoping this will cut down on it. We frown on officers attending these annual bashes thrown by these big private security outfits, although some of these outfits are better than others. We would frown on having lunch on a regular basis, or socializing with security people on a regular basis: you know, being wined and dined. But if the head of security for [a well known Canadian company] asks me to go to lunch to discuss something, I'm not going to turn him down; the reality of life is that a former policeman will call

and ask for a favour. You can't completely control it; we are frowning on it and trying to discourage it. I would say, with this policeman and some people in private security being charged recently, maybe they will be less eager in future to do it.

In our view, this problem of breaches of confidentiality of official information available to police officers will inevitably become an even more serious problem which policy makers will be required to address, especially as private security persons become more vocal in arguing that they should, as bodies performing important security functions, have access to certain police information which they are presently officially denied. In particular, policy-makers will have to respond to their argument that they should be granted access to criminal record data, particularly with respect to prospective security employees. As private security continues to expand, this issue will undoubtedly be thrust more forceably at policy makers, especially if the controls which police departments claim they are instituting do, indeed, have some effect.

The flow of information from the public police to private security is obviously only one side of the coin that has been shaped by the interchange of personnel between the public police and private security. Private security forces and the businesses for whom they act keep vast files of information on their employees and customers, and this capacity is increasing exponentially with the information revolution that the computer has made possible. Our own research on private security suggests that, as part of the quid pro quo for police information, private security makes available to the public police information held in its own data banks. While this process does not appear to be as widespread as the flow of information in the opposite direction, with the increase in the comprehensiveness, integration and accessibility of privately controlled data banks, this could well increase to a point where it, too, comes to be perceived as a problem. Whatever occurs in this regard, however, it seems likely that the twin issues of police-to-security information flow, and of security-to-police information flow, should be considered in concert.

The issue of information exchange, however, involves more than simply the exchange of confidential information between public and

private security forces. Private security forces also share information among themselves and obtain access to information from government agencies other than the police. Recently, in Ontario, the Royal Commission of Inquiry into Confidentiality of Health Information, under the Chairmanship of Mr. Justice Horace Krever, revealed considerable evidence of confidential public information (in this case, individual health-insurance records) being obtained by private security organizations without authorization and often through deceptive means (Ontario, Royal Commission of Inquiry..., 1980).

While similar evidence does not exist with respect to the unauthorized exchange of confidential information between private organizations, given the importance of information to private business, it seems inconceivable that such an exchange does not take place. Indeed, one aspect of the function of private security, namely, industrial espionage, is devoted to securing unauthorized access to such confidential information. This and other policy issues relating to information gathering and use by private security are considered further, below, in the section on "Private Security in the Workplace".

Other Police/Private Security Co-operation

Private security, while operating for the most part within the context of private justice, frequently make use of the criminal justice process, not only by calling on the public police to assist them, but also by prosecuting offenders through the courts. Indeed a recent study of the courts in one suburban Canadian jurisdiction has revealed that a majority of the cases brought before the courts involved organizational victims (Hagan, 1982).

This practice of involving the public police is very often a result of formal policy on the part of security organizations and is, in some instances, required by law. Many private security forces (both in-house and contract) maintain policies under which security employees are required to call in the public police to take over a 'case' as soon as any significant law-enforcement powers are considered necessary, despite the fact that in most cases, the security employees possess in law quite adequate powers themselves. Furthermore, once an arrest for a criminal offence has been made, the law (s. 449[3], Criminal Code)

requires that the public police be brought in.

In addition, our own research has shown that the public police also make use of private security services. Indeed, some of the contract security firms we studied in Ontario listed the public police as a major client. The services provided to the public police by private security range from the most mundane, such as the provision of a watchman service, the protection of police property, or the issuance of summonses, to assisting the police in highly sophisticated investigative functions. Related to this are recent reports that some municipalities in Quebec and Ontario have hired security companies to provide routine policing services that the public police usually undertake in other jurisdictions. (See, e.g., "Private Guards Patrol York Parks", Toronto Globe and Mail, 5 June 1981, p. 5.)

Apart from these special instances of public police reliance on private security services, the changing nature of commercial, residential and industrial environments in the highly populated urban areas is making the public police increasingly reliant upon the private security industry for the performance of certain traditional policing functions (e.g., foot patrols, enforcement of parking by-laws). For, if these functions had to be performed solely by the public police, they would strain public police resources well beyond the point at which they could be met by publicly acceptable police budgets.

This growing mutual dependence between the public police and private security has been met with considerable ambivalence on the part of both institutions. On the one hand, the public police, while they are often the first to recognize the extent to which they must depend upon the support of private security services, and the fact that this dependence is likely to increase rather than diminish in future years, express concern that conditions prevailing particularly in the contract security industry fall far short of what would be desired of any industry which is to share the onerous responsibility of meeting the full policing needs of the community. Low wages, poor recruitment standards, inadequate or non-existent training, an unusually high percentage of part-time employees and a strikingly high personnel-turnover rate, are all apparently common characteristics which substantially contribute towards the scepticism with which public police officials under-

standably view the industry (see Stenning, 1975).

On the other hand, private security itself appears no less ambivalent about its role and its relationship with the public police. While some private security forces, aware, no doubt, of the increased deference and obedience to commands which police-like outward appearances can induce, go as far as they can within legal limits (principally, licensing statutes and the Criminal Code) to make their employees look and behave like police; others appear to stress exactly the opposite—that their personnel are not police, do not behave like police, and do not apply police attitudes and philosophy to their work. An example of this kind of contrast within the in-house security industry may be found in Jeffries' description of the "Deterrence by Intimidation" and "Deterrence by Apprehension" models of retail security which she observed in her studies of in-house security operations (Jeffries, 1977, pp. 94-112).

Furthermore, many leaders within private security, while they readily acknowledge the need for public police support in performing their tasks, express resentment at the implied suggestion that private security is somehow inferior to, or merely an adjunct to, the public police. This implication, which is commonly reflected in police attitudes, may perhaps be inferred from the fact that the administration of statutes under which some private security is licensed (see below) is often placed in the hands of the public police.

Despite this ambivalence and mutual suspicion, moves are currently afoot to explore ways in which the public police and private security could co-operate further to their mutual advantage. For example, some years ago a British author suggested that the public police might wish to hire contract security companies to provide foot-partol services (Lewis, 1976). In the United States there is increasing interest among police and government officials in increasing the co-operation between these two security forces. One consequence of this is a nation-wide study designed to develop "strategies for minimizing areas of conflict and for improving relationships and effectiveness in crime prevention and control" (News Release, Hallcrest Systems, 1981).

As yet there have been few official initiatives in Canada to develop formal policies with respect to the nature of the relationships

between private security and the public police. However, with their increasing dependence on each other, and as governments begin to explore how they can reduce the costs of the public police, this will undoubtedly soon become an issue that governments will have to face. In responding to the issue, it will be necessary to assess the degree to which it is in the public interest to move towards a situation in which the services of the public police and private security become more closely integrated. In this regard, one of the issues that is likely to be at the forefront of policy is the extent to which the authority of the public police (both in terms of the police uniform and legal powers) can be put at the service of private interests. This issue arises as a result of the practice, not uncommon in some jurisdictions, of public police personnel performing private security work during their off-duty hours. In the case of the Quebec Police Force, this practice is specifically prohibited by s. 49 of the Quebec Police Act (R.S. 1977 c. p.-13). For the R.C.M.P., the matter appears to be governed by s. 25(d) of the R.C.M.P. Act (R.S.C. 1970, c.R-9), which provides that:

25. Every member who...

(d) directly or indirectly receives or solicits any gratuity or reward without permission of the Commissioner, or any bribe...

is guilty of an offence, to be known as a major service offence....

As far as we can determine, permission is never granted to R.C.M.P. personnel to perform private security work during their off-duty hours.

With respect to off-duty, private security work by members of other police forces, the situation appears to be governed, in most cases, by internal police regulations or left to the discretion of police chiefs governing authorities. It is not uncommon for such rules and regulations to allow police personnel to perform 'special pay duties' during their off-duty hours, usually with the consent of the chief of police. This permits public police personnel to perform policing duties for hire for private employers, groups, organizations, or individuals (e.g., shopping centres, sports arenas, wedding or funeral escorts). When performing such duties, police personnel have been held to be legally on duty and to retain their full peace-officer status and powers:

R. v. Johnston et al. (1966) 1 C.C.C. 226. They are thus engaged in 'private policing' in the truest sense of that term.

Such arrangements can easily lead to misunderstandings on the part of the general public, particularly when they occur in situations involving some kind of political or social conflict. The practice has been the subject of some criticism, both in the courts (e.g., Adrian Messenger Services and Enterprises et al. v. The Jockey Club et al. [1972] O.R. 369, at p. 390) and in the media (Globe and Mail, 25 January 1974, p. 7, "A Basic Question About Rented Police") involving allegations of inappropriate conflicts of interest. In some jurisdictions it has also been the subject of complaints, by members of the contract security industry, of unfair competition. This is particularly so in those jurisdictions in which local registrars of firearms (usually police personnel) are unwilling to issue restricted weapon-carrying permits to contract security guards, but allow police personnel to perform armed escort services for hire during their off-duty hours. Local registrars, however, usually argue that such work is more appropriately left to public police personnel.

Powers of Private Security Personnel

The powers of private security probably give rise to more inaccurate and misleading characterizations than any other single aspect of the phenomenon. This is because the status of private security as the agents of property owners and management, and its implications for their authority, is typically overlooked in favour of simplistic characterizations of private security personnel as having powers which are no different from those of 'ordinary private citizens'. Such a characterization, while it undoubtedly contains an element of truth, is inadequate for two reasons. In the first place, most 'ordinary private citizens' are not employed full time to perform security and policing functions, as many private security employees are. Nor, it should be added, do 'ordinary private citizens' typically dress in uniforms, as many private security personnel do. Secondly, most 'ordinary private citizens' do not routinely act as the agents of owners and managers of places such as shopping malls and housing complexes, which, although legally private property, in practice include many 'public places' in the sense

that members of the general public are routinely encouraged to frequent them.

A true understanding of the nature and extent of private security powers must start with a recognition of the importance, first, of the unique access which private security personnel have to private property—as compared, for instance, to that of the public police, who, with some exceptions, have no right of access to private property other than by invitation of the occupant. Secondly, the dramatic changes which have occurred in the nature of private property in recent years must be considered. Specifically, with the modern spread of what we have called 'mass private property', the traditional congruence between private property and 'private places' has been steadily eroded. More and more private property contains substantial areas which are 'public places'. Yet the legal regime under which the powers of private security personnel are defined—specifically, property law and contract law, as well as the criminal law itself—evolved during an historical period (the 19th century) when the realities of property relations were very different from what they are today. As a result, the development of modern policy with respect to the powers of private security requires what Canada's Chief Justice has recently described as "a search for an appropriate legal framework for new social facts which show up the inaptness of an old doctrine developed upon a completely different social foundation" (*Harrison v. Carswell* (1976) 25 C.C.C. [2d] 186, at 194).

Because most people tend to think of private security powers as analogous to public police powers, commentators on private security powers have tended to concentrate almost exclusively on the kinds of law-enforcement powers enunciated in such statutes as the Criminal Code. Such analysis, however, is completely inadequate for understanding private security powers. In the first place, the Criminal Code itself, in delineating law-enforcement powers such as those of arrest, search and seizure, makes a simple dichotomy between the powers of 'peace officers' and those of everyone else—although at times the latter category is further dichotomised into owners and possessors of property and their agents, on the one hand, and 'anyone', on the other. (See e.g., s. 449 of the Code dealing with arrest powers.) This

classification takes no substantial account of the modern existence of a large body of private security personnel who are engaged in security and policing work as a full-time occupation. As we have already noted, this occupational group now rivals the public police in numbers. Historically, however, it is clear that the categories of the Criminal Code, whereby law enforcement powers are distributed between 'peace officers' and others, were not devised with the realities of modern private security in mind. In formulating policy with respect to existing law-enforcement powers in the Criminal Code and similar statutes, therefore, the massive shift in the realities of policing which has accompanied the development of private security must be taken into account. Such a re-evaluation will need to consider not only the continuing adequacy of the categories of 'peace officer', owner/possessor of property, and 'anyone', to which we have alluded, but also the legal definitions of 'property' and 'public place' for law-enforcement purposes, and whether law-enforcement powers should continue to be granted on the basis of whether a person happens to be an agent of the owner or occupier of private property. These matters are considered further in our discussion of private security and the protection of privacy, below.

Of much greater importance in understanding the powers of private security personnel, however, is an appreciation of the fact that traditional law-enforcement powers, such as those which are spelled out in the Criminal Code, are rarely the most significant of the powers which private security personnel routinely exercise. The sources of their most significant powers, on the contrary, are to be found in such areas of law as the law of property (governing, for instance, the rights of property owners to control access to, and conduct on, their property), employment and labour-relations law (defining the rights of management to control activities in the workplace and the conduct of workers), and the law of contract (whereby submission to various security procedures can be made a condition of access to various facilities and services). The powers which private security personnel derive from these sources (as agents of property owners, business management and contracting parties) may be described as quasi-legal powers, in the sense that they are exercised in relation to persons who,

through the use of various legal fictions, are often deemed in law to have 'consented' to their exercise. Two examples will serve to illustrate the nature and significance of these powers, and the kinds of legal fiction through which consent is held to exist.

1. A person walks into a department store past a sign at the entrance, which clearly advises him that all patrons of the store are liable to have their shopping bags, handbags, and so on searched by security personnel on leaving the store. If he passes on into the store, having read and understood this sign, the law will conclude that he has consented to such a search. But suppose, after being in the store for a while, he reflects further and decides that this is an unreasonable condition of being on the premises, and that he would prefer not to remain on the premises under such a condition. Have store-security personnel the legal right to search his shopping bag before permitting him to leave the store, even against his will? And if they do so, is such a search to be regarded as a search on consent or as the exercise of a legal right which does not require his consent? Clearly, to call such a search 'a search on consent', when the man is loudly protesting that he does not consent, is to employ a legal fiction. Yet, although this matter is not free of doubt, this is probably the conclusion which the law would reach.
2. A cashier in the same department store is leaving the store at closing time and is required by a store-security guard at the door to open his lunch box for inspection. In doing this, the guard is following company rules, which are sanctioned by the collective agreement between the company and its employees, and which require employees to submit to such searches. The cashier voted against the collective agreement in the ratification vote because he disagreed with this term of it. Is the search of his

lunch box to be regarded as a search on consent, or as the exercise of a legal right which does not require his consent? Again, to call such a search 'a search on consent', when the cashier is loudly protesting that he does not consent, is to employ a legal fiction (in this case, that the consent of the majority of employees, expressed through the ratification vote, is deemed to be the consent of each employee). Yet, again, this is probably the conclusion which the law would reach.

The examples we have given relate to relatively minor interferences with liberty and intrusions upon personal privacy. By similar legal reasoning, however, security procedures which result in major and continuous interference with liberty and intrusions on individual privacy can be justified under our current laws. The rapidly expanding technology of intrusion, furthermore, ensures that such interference with the liberty and privacy of citizens can be accomplished with ever-increasing efficiency, sophistication and subtlety. Thus, citizens may now be subjected to personal 'searches' through the use of electronic and radiological devices, without their even being aware that this is taking place. Similarly, through the largely fictional consent which is achieved through the modern employment contract, employees may be effectively required to submit to mechanical (e.g., by lie-detectors) and psychological testing which probes far more deeply into the privacy of their personal lives than any physical search can do. Surveillance devices in the workplace and elsewhere have similar capabilities for systematically undermining personal privacy.

Our point here is not that any of these security practices is necessarily wrong or undesirable—although some of them may be—but rather that the tendency is to assume that because they are 'within the law', they must be acceptable. A policy review of the powers of private security, however, rather than starting with such an assumption, should begin with a fundamental re-evaluation of the laws which permit these practices (and especially of the legal fiction whereby consent is implied), in the light of modern realities of 'mass private property' and private security. For, in many instances, the legal fiction from which the notion of consent to such practices is derived evolved at a time

when economic and social conditions were quite different from what they are today, when rights associated with private property ownership were assumed to deserve natural pre-eminence, and when 'freedom of contract' was regarded as a virtually unchallengeable and sacrosanct cornerstone of liberty. The appropriateness of such undiluted expressions of the ethic of individualism in confronting the kinds of social issues which present themselves in the late 20th century, however, has been questioned, in recent years, in many areas of law of which family law, landlord-and-tenant law, and anti-discrimination laws provide some well-known examples. In each case, the unbridled protection of freedom of contract, which was the hallmark of earlier laws, has, to a greater or lesser extent, been tempered by modern legislation which is designed to inject considerations of the public interest into areas of 'private law' in order to protect certain classes in society in the face of inequalities of economic power. Policy makers, in our view, will have to ask themselves whether the modern realities of 'mass private property' and of the growth of private security do not call for similar considerations in shaping the laws from which private security personnel currently derive their most significant powers. Just as we no longer tolerate racial discrimination and the exploitation of children in the name of freedom to contract for labour, it may be that we should also reconsider the appropriateness of tolerating the extent of current resort to search, surveillance and lie-detection powers and devices (to name but a few of the modern powers of private security), which our law currently allows in the name of supporting property rights, management rights, and freedom of contract. In terms of the continued acceptability of the legal rules whereby consent is defined as the basis for the quasi-legal powers which private security exercises, the fact that many private security personnel are dressed in uniforms which may well be misapprehended by the general public as implying that they have greater authority than the law actually allows, is also a relevant factor to be taken into consideration in formulating policy in this area.

Apart, however, from these general policy issues which arise in relation to the definition of private security powers, other more

specific issues will also have to be addressed. One of these is the question of whether private security personnel should ever be given 'peace-officer status' (and the powers which that authority implies). Currently, a small, but undetermined, number of private security personnel do enjoy this status, either by virtue of special legislation (e.g., railway constables under various Railway Acts) or through being appointed as 'special constables' under various Police Acts. The existing law relating to the application and implications of peace-officer status to persons other than members of public police forces, can fairly be said to be in chaos (for a review, see Stenning, 1981: Ch. 2), particularly with respect to questions of the political and legal accountability of such non-police peace officers. The appropriateness of conferring the powers of peace officers on security personnel who are in private employment, and the possibilities of conflicts of interest (i.e., between the public interest and the private interests of their employers) inherent in such a practise, raise policy issues which have rarely been adequately enunciated, let alone resolved. Related to this last issue, of course, is the question, discussed above, of whether public police personnel should be permitted to perform private security functions for hire during their off-duty hours and, if so, what status they have when performing such duties. This practice can be seen to raise similar policy issues related to conflicts of interest, accountability, and so on, as the practise of granting peace-officer status to private security personnel.

Finally, on the subject of private security powers, there is the question of whether private security personnel presently have enough knowledge and training in the extent of their powers, the proper exercise of them, and perhaps most important, the limits of their powers. As the policing role of private security grows less and less private (in the sense that private security personnel increasingly come into contact with members of the general public), this issue of the adequacy of the training of private security personnel and their knowledge of their powers can be expected to become increasingly germane to the formulation of public policy respecting private security. Our own research on this issue, although it is limited to members of the licensed contract security industry in Ontario, suggests that private security personnel typically have minimal training and knowledge about

their powers. A further concern in this respect arises from the high incidence of foreign ownership and control of private security: it is by no means uncommon in Canada to find that private security employees' knowledge of their legal powers and responsibilities is derived from training manuals prepared by their parent companies (usually from the United States) and based on non-Canadian law.

Private Security in the Workplace

When deployed in the workplace, private security takes on an especial significance which gives rise to a whole array of important policy issues. This is because "in industry and commerce the function of security in maintaining owner/management control of physical assets constitutes one element in the process through which the power relationships between groups in the work situation are preserved" (Flavel, 1973: 14). To put it more bluntly, private security in the workplace is often seen as involving the need to protect corporate property and assets, not only from losses resulting from natural and external causes, but also from the actions of the workers themselves. Thus effective controls of property in the workplace easily come to be seen as necessitating control of people, as workers.

Broadly speaking, the major policy issues which arise with respect to the role and functions of private security in the workplace can be said to arise from two of its aspects: the methods used to achieve security and the relationship between private security and management. Each of these will be considered in turn.

(a) Private Security Methods in the Workplace

Security in the workplace is generally accomplished through at least three integrated strategies: information gathering and auditing, surveillance, and discipline, each of which gives rise to some important policy concerns.

(i) Information gathering and auditing

Since the principal object of private security in industrial and commercial settings, as we have noted earlier, is the prevention of loss in order to protect profitability, the collection of substantial

information about the process of production and about the work-force itself is an essential aspect of any effective security operation. Of concern to policy makers, therefore, must be not only the manner in which such information may be collected (in terms, especially, of whether the rights of others are being unduly eroded), but the use to which such information is put once it has been collected. Equally of concern, from a policy perspective, is the problem of setting limits on legitimate information collection and use, and ensuring systems of control through which such limits can be effectively enforced. With the rapidly expanding development of information technology, such policy concerns are assuming an increasing complexity and urgency, yet it is only recently that serious attention has been given to them.

Of critical importance in understanding the modern realities of information management and control, and their relationship to security, is an appreciation of a significant shift in attitude towards information and knowledge, which appears to have occurred during the post-war era. While copyright and patent laws have, for a long time, reflected a recognition of proprietary interests in information and knowledge, it is the vast expansion of information storage, analysis and retrieval technology (especially through computerization), which has occurred during the last thirty years, that has generated a new attitude towards information as 'property'. As 'property', which must be protected against 'loss', information has thus become a natural concern of private security, and the overriding policy concern in this regard is that laws which were conceived in the 19th century (e.g., our present Criminal Code) at a time when 'property' was conceived of purely in terms of physical assets and chattels, are no longer relevant and adequate to protect the public interest in relation to this 'new property'.

Private security thus has a dual relationship to information: on the one hand, it is typically charged with the responsibility of gathering information for security purposes, and on the other hand, it is assigned the task of protecting information as 'property'. It does not require much imagination to appreciate the potential conflicts which may arise within and between these two roles in industrial and commercial settings, and the extent to which the resolution of such conflicts may call for policy making which will adequately reflect and protect the

public interest. A few examples will serve to illustrate the kinds of specific policy issues which are arising in this regard.

In terms of the role of private security in relation to information about the production process itself, two such areas of concern are those of industrial espionage and occupational health and safety. The need to ensure the competitive profitability of a business is typically viewed as involving the necessity, not only of rigorously protecting information about the business (e.g., 'trade secrets'), but also of gathering 'intelligence information' about any potential 'threats' to the profitability of the business. Both tasks typically fall within the mandate of an industrial or commercial security force. In a competitive market economy, however, the business activities of one's competitors and the regulatory activities of governments, in the public interest, can both easily come to be viewed as 'threats' to the profitability of one's own business; in such circumstances the temptations facing private security to engage in covert industrial espionage and deliberate suppression or concealment of 'damaging' information about one's own production processes are substantial. Yet the public interest may suggest the need for effective curbs on both such kinds of activities. To date, however, research and information about both has been minimal.

More is known about private security practices with respect to information gathering in relation to the work-force. These practices involve the gathering of information, not only with respect to prospective and present employees, but also in relation to employee organizations and their activities. Policy issues which arise out of the former typically involve the necessity of balancing the rights of individuals against the rights of corporations in an industrial or commercial enterprise. Such issues arise in relation to such practises as: private security access to supposedly 'confidential' information held by government agencies (e.g., police and criminal records, health-insurance and medical records, and records of such agencies as workmen's compensation boards and unemployment insurance commissions); use of various lie-detection devices (e.g., polygraphs, voice analysers) as employee-screening techniques; and the not-uncommon practice of requiring a prospective or present employee to

'waive' his or her common law rights (e.g., to privacy) as a condition of employment.

Information gathering by private security in relation to employee organizations and their activities similarly raises critical policy issues. Again, the resolution of such issues involves the necessity of balancing the traditional 'rights of management' against the (more recently established) collective rights of workers. This goal, which is difficult to achieve at the best of times, is complicated further by the fact that there are still apparently some employers who hold to the view that the very existence of employee organizations constitutes a 'threat' to a successful business enterprise, against which private security forces can and must be deployed. Resulting practices of private security infiltration of labour unions, so-called 'labour espionage', anti-union, disruptive and intimidating tactics, and private security involvement in provoking and breaking strikes (all of which have been witnessed in Canada within recent years), all raise significant policy issues.

In addition to the policy questions which arise in relation to the gathering of information by private security in the workplace, however, some equally important policy issues arise in relation to the use and dissemination of the information gathered. A major issue here is the question of what rights of access to such information employees and others (e.g., prospective employers, police and other government agencies) should have, and, correspondingly, what duties of confidentiality should be imposed on private security and its employers. At issue here is the right, if any, of workers not to have certain information about them collected and the further right not to have information which may be legitimately collected used and disseminated within and outside the work environment without their at least being given an opportunity to check and challenge its accuracy. Two considerations would seem to be of particular importance in addressing these issues. In the first place, much of the information which is gathered about workers in the work-place is gathered either without their knowledge or consent, or as a non-negotiable condition of employment. Secondly, dissemination of inaccurate information can inflict considerable, and often irreparable, harm on the individual. The harm which results from dissemination of misinformation, beginning

with the inability to obtain employment or credit, can quickly lead to significant financial and social disadvantage for the individual and his or her family. With the modern development of information-transfer technology, the adverse personal consequences of the dissemination of misinformation are constantly increasing.

Against these concerns, of course, must be placed the legitimate needs of businesses and other entities for access to information gathered by private security. Businesses must be able to protect themselves against dishonest employees and unscrupulous competitors; the police must be enabled to detect, and sometimes prevent, serious crimes and disorder; and governments must be able to regulate effectively business and industrial practices to protect the public (including workers) from health-and-safety hazards, environmental degradation, and so on.

The difficulty of developing policies to resolve these issues and of establishing effective mechanisms for implementing such policies, are compounded by two other considerations—one relating to the nature of private security and its employers, and the other relating to the modern realities of information technology. As we have noted earlier, many of the corporations which employ private security are international or multinational in nature. Given the pace with which modern information technology allows information to be transferred from one location to another, this fact results in serious problems in controlling the gathering and use of information by private security. Thus, for example, an international hotel chain may gather information about its employees in one country, store and process it on a computer in another country, and disseminate it in several others. Under such circumstances, controlling the use and dissemination of information, once it has been collected, is generally beyond the effective capability of provincial or national governments. A further issue of concern in this connection has been raised in our interviews with contract security executives, some of whom suggested that Canadian business information is routinely being released, through international private security linkages, to foreign business interests. This, it was argued, serves to improve the competitive position of foreign businesses at the expense of their Canadian counterparts.

(ii) Surveillance

A major strategy used by private security for achieving security in the workplace is visual and audio surveillance, not only of the workplace but of the work-force. Such surveillance may be accomplished through the use of security personnel (such as 'honesty shoppers', investigators, or others) or, more commonly nowadays, through a wide variety of electronic devices; it may be carried out openly and with the consent of those being observed, or covertly possibly even without their knowledge; it may be sporadic or continuous; and it may be employed for one or more of a wide variety of security purposes ranging from the prevention of industrial accidents, through the detection of employee theft and vandalism, to the protection of employee property.

The highly intrusive potential of surveillance in the workplace has, as might be expected, led to considerable controversy over the use of this technique as a security strategy. At issue, of course, is the question of the human dignity of workers in general, and their right, if any, to privacy in the workplace, and how such matters may be reconciled with the management and property rights of employers with respect to their businesses. In addition, the matter has also been raised of the effects of surveillance in the workplace in terms of occupational health and minimum standards for working environments. In this last connection, attention has been focused particularly on the psychological stress which workers may experience as a result of being the object of certain conditions of surveillance. While these problems are increasingly being addressed on an ad hoc basis by arbitrators in relation to specific industrial disputes in Canada (e.g., the postal strike in 1981), the growing frequency with which they are becoming a source of such disputes makes it clear that a more systematic policy review needs to be undertaken in this regard.

(iii) Discipline: models of 'private justice'

Systems which have been established within industry and commerce for disciplining workers are the epitome of what we have referred to earlier as 'systems of private justice' and are increasingly supplanting the criminal justice process (police, courts and corrections systems) as the means of dealing with crime in industry. Nor should it be thought

that such systems handle only trivial infractions of company rules and other minor matters. In reality, they are also employed to handle what, in the lexicon of public criminal justice, would be termed 'serious criminal offences', such as theft, fraud (sometimes involving thousands of dollars), sabotage, arson, dangerous driving and criminal negligence. The resort to systems of private justice, in preference to the public criminal justice system, to deal with such matters raises some critical policy issues. Before addressing these, however, it will be as well to review briefly the principal ways in which such systems differ from the public criminal justice system. The simplest way to explain these differences is to consider, through an example, the way each of the two systems might deal with the same incident.

Let us suppose that employee X, who works in a manufacturing plant, is found by the plant's security personnel to be routinely removing company property of high value without authorization in order to sell it for his personal profit. In handling such a case, the company security department is likely to make a choice between dealing with it internally, through the company disciplinary system, or invoking the criminal justice process. Very often, the risks involved in trying to deal with such an incident both through the disciplinary process and through the criminal justice system are considered too great. Each is likely to prejudice the success of the other.

In choosing the option of calling in the police to investigate the problem, the security department would essentially be adopting the assumptions and objectives of the formal criminal justice system. In particular, calling in the police involves treating the problem as a crime—that is, as an offence against the state (in this case, theft), which involves, not simply the employee and the company, but the wider society. It also results in the company losing most of the initiative in determining how the matter shall be dealt with, and what would be an appropriate outcome of this process. Finally, it submits the dispute to an adversarial, adjudicative, resolution process in which the determination of the employee's guilt or innocence and, in the former circumstance, of an appropriate sentence, will be the principal objective.

From the company's point of view, deciding to submit the matter

for resolution by the formal criminal justice system involves some very important implications. The company may temporarily or permanently lose the employee's services; it may temporarily lose the use of the property which was removed (while it is held as a trial exhibit); it may have to expend considerable money and manpower in assisting the police to investigate the case, in presenting evidence before the court, and in other related activities. Furthermore, the court process will offer no guarantees that the property will ultimately be restored to the company, or that if it is restored, its condition will be such that it will still be of value to the company. Moreover, the company may also have to spend time and money hiring and training a new employee to replace employee X. Finally, the more general problem of property loss, of which employee X's behaviour may represent but one example, will not have been addressed. Other less immediate considerations might also be of relevance to the company. These might include the likely effect on the morale of other employees of involving the formal criminal justice system in such a case, and the possibility that this course of action might lead to union intervention or even to industrial strike action in support of employee X.

If the company, for all or any of these reasons, decides not to invoke the formal criminal justice system, but to resolve the matter through its own private justice system, a radically different set of assumptions, objectives, processes and outcomes is likely to be brought into play. We may consider each of these in turn.

Assumptions. Dealing with the matter internally involves the adoption of quite different assumptions about the nature of the problems posed by employee X's behaviour. In the first place, the incident is likely to be viewed not principally, if at all, as a crime, but as a problem of 'loss prevention'. As a problem of loss prevention, the incident will be seen as one which is of principal concern to the company and its employee, and only of marginal concern to other persons. (It might, for example, be considered in terms of the likely effect on the price of the company's product which a persistent loss problem at the factory will involve. Even this possibility, however, is likely to be viewed principally in terms of a problem relating to the company's competitiveness. Secondly, it is likely that the emphasis on

loss will lead the company to take a course of action which goes beyond dealing with the particular incident at hand. The problem is likely, therefore, to be viewed principally as part of a general loss-prevention problem, rather than simply as a problem of how to punish or compensate for a particular incident.

Objectives. A whole host of objectives is likely to be given prominence which would be given less or no emphasis by the criminal justice system. Some of these might be: maintaining optimum production at the factory; minimization of disruption of management/employee relations; recovering the stolen goods with as little cost as possible; maintaining employee X on staff if possible; minimizing the possibility of company/union conflict; developing a strategy to minimize future property losses at the plant. It is likely, too, that many of the objectives of the formal criminal justice system will also be shared by the company's private justice system, although they would, perhaps, be given different emphasis and priority.

Processes. The process of resolution is likely to be quite different in a private justice system than it would be in the criminal justice system, since the two systems would involve different participants in different roles. If the plant in which employee X works is unionized, the dispute would almost certainly be resolved through recourse to a well-established grievance procedure, the basic form of which would be laid down in the collective agreement covering the bargaining unit of which employee X is a member. This process would normally commence with some disciplinary action by the employer (e.g., a notice of suspension or dismissal), which would then be made the subject of a grievance by employee X. In other words, unlike the criminal justice process, the private justice process often begins with the determination of a 'sentence', which then becomes the subject of a grievance in which its appropriateness is challenged and debated. Resolution of the grievance will normally go through a series of steps in a predetermined procedure, each of which is progressively more formal. The more formal stages, however, will only be invoked if the incident cannot be successfully resolved through the less formal processes.

The initial steps are likely to be highly informal, involving discussions and negotiation between employee X, his supervisor, a union

representative and a representative of the security department. In the event that the plant is not unionized, the resolution procedure is likely to be governed by ad hoc negotiations or by procedures established by past practice within the plant. In either event, as in the case of an official grievance procedure, emphasis is likely to be placed on minimum disruption of the work at the plant.

Only the investigative stage of the procedure is likely to be at all similar to the public criminal justice process, and even at this stage the private justice system, since it is concerned with the incident principally as a symptom of a wider loss-prevention problem, is likely to launch a much more broadly based investigation than could be expected from investigators preparing a case for a court hearing. In particular, the extent to which employee X's behaviour is typical or atypical of behaviour of other employees at the plant is likely to be a prime point of concern in the investigation of the incident. During the whole investigative and resolution process, employee X is likely to be represented, if at all, not by his lawyer, but by fellow workers or a union official.

Adjudication, in a formal sense, is likely to be given quite low priority in the initial process of resolution of the problem. The private justice system is likely to be concerned with the allocation of 'guilt' or 'innocence' only to the extent that it makes more feasible the implementation of a wider solution to the wider problem of loss prevention. Thus, for instance, if a wider solution is found to be more acceptable to the company's employees or to the union, that is, if they prefer that employee X not be formally held 'guilty' of removing the property, a finding of 'guilty' is not likely to be sought or made. The matter of employee X's conduct is thus more likely to be resolved through negotiation, mediation and settlement, than through any formal adjudicative process. This process is likely to involve a wide range of people: from the union, from the personnel department, from the security department, and from higher management.

If the process of achieving a settlement is unsuccessful, resort may well be had to some form of arbitration by an arbitrator who is acceptable to all, or most of, the interested parties involved. The arbitrator's award, even though it is theoretically binding on the

parties, may be the subject of still further negotiation (e.g., between the union and company management at the time of collective bargaining). Thus the final resolution of the dispute is always liable to be a product of negotiated settlement, and the incident itself may well be only one of many items 'on the table' in such negotiations and may not necessarily be considered a critical one by the negotiating parties.

Outcomes. The range of outcomes which are considered by a private justice system is likely to be much broader than those considered in most cases that come before the criminal courts. Obviously, some of the outcomes which might be considered by the courts (e.g., imprisonment of employee X) would not normally be contemplated by a private justice system. Any disposition of employee X's case by the private justice system at the company, however, is likely to be as much, if not more, concerned with the continuation of effective operations at the plant and the general problem of loss prevention as with the fate of employee X. One such company, for instance, when faced with the problem of unauthorized removal of company tools by employees, agreed, as part of the resolution of a particular case, to establish a tool 'lending library' for employees. Another agreed to offer employees a very substantial discount on the price of any tools they bought from the company. In each case, the union concerned agreed that if the company met these undertakings, automatic dismissal would be considered, in the future, a just and fair penalty for any employee found removing tools from the company premises without authorization. Any dissatisfaction with the company's security procedures generally, or, in particular, with its surveillance or other investigative procedures by which such offences are detected, might also result in changes as part of the resolution of the dispute.

In terms of a more specific outcome in dealing with employee X, again, it is likely that a private justice system will give a much higher priority to restitution and/or compensation than to punishment in the form of dismissal, suspension or a fine (collected by docking pay), and other dispositions most commonly associated with the criminal courts. If employee X's conduct is viewed as sufficiently serious, however, the company is likely to have at its disposal some extremely severe penalties which, in terms of the disabilities they may impose on the

employee, are comparable to those available to criminal court judges. The 'extreme penalty', of course, is that of dismissal from the company. Depending on the age and seniority of the employee, dismissal may involve the extinction of any opportunity he may otherwise have had for continued employment within that industry: the employee may, in fact, be 'blacklisted', as a result of the sharing of information about him among private security personnel within the industry as a whole; in addition, he may also suffer substantial or complete curtailment of his company pension rights. Such penalties, for obvious reasons, are likely to be regarded far more seriously by an employee than many of the penalties which he would be likely to receive if the 'case' were dealt with in the public criminal justice system by imposing probation, a fine, a suspended sentence, and so on.

It will be apparent from this example that private justice systems incorporate many values which are foreign to the public criminal justice system or at least place such values in quite different orders of priority. They are, in fact, as we have pointed out earlier, highly socialized, in the sense that they are much more 'community-oriented' (the 'community' in our example being the manufacturing plant), and victim-oriented systems of justice, in which the alleged 'offender' and his 'rights' often take a back seat in favour of other interests and concerns. For this reason they tend to evoke quite negative reactions from many professionals (including police and lawyers) who are more used to the values and procedures of the public criminal justice system. In the light of our scant current knowledge about these private justice systems, however, it is presumptuous and premature, at this point, to assume that the kind of justice they dispense is necessarily inferior to the kind of justice dispensed by our public criminal justice system.

Nevertheless, it is obvious that the spread of such private justice systems, and the increasing monopoly they are developing over the resolution of disputes and incidents which have traditionally provided the business of the public criminal justice system, raise some fundamental policy issues. At the forefront of these is the question of balancing the rights of the individual with the rights of the collective community. As we have tried to illustrate, private justice systems, by their nature, tend to strike a very different balance in this regard than

does the more offender-oriented public criminal justice system. Indeed to speak of 'rights' at all in connection with private justice systems is somewhat misleading, since, to the legal mind at least, the term 'rights' generally refers to claims which are enforceable through the public legal system. As we have noted, however, the resort to private justice systems tends, more often than not, to involve eschewing recourse to the public legal system and avoiding, where possible, resort to powers and procedures which are likely to result in the involvement of public authorities. Whereas the 'rights' associated with the public legal system are generally not considered to be negotiable, it is of the essence of private justice that the entire process, including procedures and the type and degree of participation by various interested parties, is always more or less negotiable. In this sense, private justice systems tend to be much more overtly 'political' than the public criminal justice system, and the legal 'rights' of accused persons in the latter tend to become subordinated to the politics of negotiation in the former.

Whatever may be the benefits of private justice systems as mechanisms for dealing with the kinds of problems which we commonly deal with through our public criminal justice system—and we believe that they may be considerable—it may still be desirable to establish and maintain some minimum standards and 'rights' for those who find themselves becoming subject to such procedures. At the very least, such procedures should be evaluated in terms of the basic principles of freedom and civil liberty which are said to underlie our democratic society.

In addition to the issue of 'rights', however, there is also the important issue of equality. In this connection, it must be recognized that the diversity and flexibility of systems of private justice—which derive from their negotiated and negotiable character—may represent at once their strength and their weakness. From one point of view, the sensitivity of private justice systems to the environments in which they operate—which is a product of their diversity and flexibility—may be seen as allowing them to offer more realistic and palatable resolutions of social problems within those environments than our public criminal justice system, as it presently operates, is able to offer. It would be naive not to recognize, however, that this same diversity and flexibility

has the potential for generating great inequality of treatment, and unfairness. In industrial and commercial settings, for instance, it is becoming increasingly clear to us that the quality of 'industrial justice' is probably substantially associated with the presence or absence of unions (although we would not be prepared to agree unreservedly that their presence always necessarily enhances that quality). In particular, there is a noticeable trend towards the inclusion within collective agreements of clauses which, in some cases, spell out in considerable detail the kinds of security and private justice procedures which may be adopted in the workplace. Such matters are not uncommonly items on the bargaining table for discussion between unions and management. Under these circumstances, the fact that only about one third of the labour force in Canada is unionized obviously is an important factor to be taken into account in developing policy with respect to private security and private justice in the workplace.

(b) Private Security's Relationship to Management

Despite the growing trend, to which we have just alluded, towards treating security in the workplace as an item for collective bargaining, there are few who would disagree that the maintenance of security in the workplace is a responsibility and function of management. The control and deployment of private security in the workplace has thus long been regarded as a 'management right', although, as we have indicated, this perception may now be changing. The traditionally close association between private security and management, however, raises some important policy considerations.

One of the perennial concerns over the organization and mobilization of the public police has been their apparently disproportionate concern with 'street crime' and lower-working-class crime, and their concomitant disinterest in 'white-collar crime' and what Pearce (1976) has called 'crimes of the powerful'. In recent years, in Canada, this concern has been expressed in terms of advocacy of policy changes towards the public police, which would be designed to redress this kind of imbalance (see, e.g., Grant, 1980). The well-accepted relationship between private security and corporate management, however, equally gives rise to such concerns in terms of

the relative attention which is given to criminal and other anti-social behaviour in different segments of the workplace. Indeed, such concern may be better founded in the case of private security than it is in the case of the public police. This is partly because private security, on account of its dependent relationship to corporate management, may be unable effectively to detect, prevent or control white-collar crime and 'crimes of the powerful'. For the same reason, and because of their role as protectors of information as 'property', private security may very well be actively deployed by corporate management to prevent or frustrate attempts by public authorities, such as the police, to detect or control such crime. Finally, as the recent findings of a Royal Commission of Inquiry in Ontario have confirmed, there is some evidence to suggest that private security may, on occasion, be deployed to commit illegal acts on behalf of corporate management (Ontario, Royal Commission of Inquiry...1980). The close and interdependent association between private security and the public police, to which we have alluded earlier, may be thought to exacerbate these concerns, about which at present little is known. In terms of the formulation of policy with respect to the overall role which is to be played by private security in providing for the policing needs of society, these are concerns which cannot be ignored.

Another issue which arises out of the special relationships which private security has with management is the question of whether or not private security personnel ought to be permitted to join unions and, if so, what the relationship ought to be between unionized private security personnel and other unionized workers. At the present time, in Canada, large sectors of private security (especially contract security) are not unionized, although unionization within the in-house sector, and within the contract sector in British Columbia and Quebec, is becoming more common. Yet the public interest issues which may arise from unionization of private security employees—especially as private security can be seen to be 'taking over' more and more areas of policing which have hitherto been undertaken by the public police—have hardly been addressed so far, although one province (Ontario) has enacted legislation requiring private security bargaining units to be separate from bargaining units representing other workers.

The Protection of Privacy

We have already had a good deal to say in this paper about the relationship between private security and privacy. In particular, we have pointed out that the affiliation between private security and those who own and control private property, allows private security, under our current laws, the freedom to engage in security practices which sometimes involve substantial intrusions on individual privacy. In truth, private security, like the public police, has a very special relationship to privacy, in that its activities are directed both to protecting and invading it. Unlike the public police, however, private security is not even theoretically governed by the public interest in reconciling these two potentially conflicting objectives. Rather, it is committed to enhancing the privacy of its clients, and the achievement of this goal frequently involves systematic intrusions on the privacy of others whom its clients view as actual or potential threats to their security. In protecting the privacy of its clients, therefore, private security simultaneously undermines the privacy of others. The privacy of individuals is thus eroded in the name of the protection of private property.

There is a profound irony in this modern reality, for in earlier times, the laws defining rights associated with private property were hailed as the means by which privacy was defined and protected. The famous dictum in Semayne's Case (1604) that "the house of everyone is to him as his castle and fortress" provide: an early illustration of this ideology. How is it, then, that in the late 20th century, the laws governing private property have become the means through which privacy can be systematically eroded by private security? The answer, we believe, springs from two fundamental aspects of the phenomenon of private security, which must be clearly appreciated if the relationship between private security and privacy is to be understood.

The first of these is the association between private security and what we have called 'mass private property', (i.e., large tracts of land owned by corporations for commercial purposes) and the false assumption that 'mass private property' bears the same social characteristics and consequences as the individual private property which it is replacing. While there has probably never been a complete

congruence between private property and 'private places', there is no doubt that our concepts of privacy, which are based on the institution of individual private property, have also been based on the assumption that most places which are individual private property are also private places. Thus the reason why the law declared that a man's home is his castle (and therefore a source of his legally protected privacy) was that it assumed that his home was a private place. The modern development of 'mass private property', however, has turned this traditional association between private property and private places on its head. For, increasingly, 'mass private property' is in no sense a 'private place'; in fact, to the contrary, such places are typically only commercially viable to the extent that members of the general public can be persuaded to frequent them routinely. The modern privately owned shopping mall provides a classic example of such 'mass private property'. Yet, despite this obvious difference between a shopping mall and an individual home (the one being essentially a public place, the other a private one), the laws defining the rights of their owners in dealing with persons who come on to the property (e.g., laws of trespass, occupier's liability, protection of property) are the same. And it is because of this largely unquestioned analogy between individual private property and modern mass private property, that laws which were originally designed to protect individual privacy have become the means whereby those who own and control private property can, through private security, systematically invade privacy. As we have pointed out earlier, this is no coincidence; it is the development of mass private property which, in our view, has largely facilitated the modern growth of private security.

There is another, more subtle, feature of private security, however, which helps to explain why its activities so easily and effectively and with so little challenge undermine individual privacy. This feature can best be appreciated through a comparison with the public police. As we have noted earlier, the public police do not derive their authority from any close association with private property. On the contrary, they are accorded by the state certain powers to intrude on individual privacy (including interventions on private property). Because these powers involve such potential intrusions, they are hedged

around by a whole array of legal checks and safeguards which collectively are characterised as 'due process'. Because of these features of police power, citizens can be expected to be vigilant against its excessive exercise, and the police themselves, in accordance with Sir Robert Peel's original prescription, frequently can be heard cautioning against its unnecessary exercise. This delicate balance in police/community relations is further encouraged by the fact that the exercise of police power so often relies on the use or threat of physical force.

By contrast, the social dimensions of the authority of private security are quite different. Far from being thought of as involving the possibility of invasions of privacy and private property, the authority of private security, as we have seen, finds its historical and ideological roots in their protection (i.e., the protection of the privacy and private property of those on behalf of whom private security acts). It is, we believe, because of this powerful ideological source of legitimacy for private security authority that the vigilance and safeguards which are associated with the exercise of authority by the public police are absent in the case of the exercise of authority by private security. Yet, as we have pointed out, private security, because of its association with private property, has the potential (and the capacity) for much greater invasions of individual privacy in the exercise of its authority, than do the public police. In the exercise of private security authority, the due process safeguards which have been erected to protect citizens against the exercise of undue police authority are largely put 'out of play'.

There is another reason, however, why the exercise of private security authority is so readily accepted in circumstances in which the exercise of police authority would probably not be accepted. We have noted that in exercising their authority, the public police rely heavily on the use and threat of physical force. As a result, the exercise of public police authority tends to be highly visible. Because of their direct access to the resources of their economically powerful clients, however, private security systems have access to a whole range of coercive devices which depend less for their effectiveness on the display or threat of actual physical force. Thus, for instance, private security has available sanctions such as the denial of employment (or

continued employment), the denial of credit, of accommodation, or of access to facilities or resources, which can usually be accomplished without the use or threat of physical force because their exercise can be legitimized by reference to the powerful ideologies of property rights, management rights, and so on. In fact, such sanctions can sometimes be applied without the person who is subject to them being fully aware that they have been applied. As a result, the means at the disposal of private security, while they are no less effective than those used by the public police, are frequently considerably less visible. Being less visible and more subtle in the way they intrude on our privacy and limit our freedoms, they attract less attention, are perceived as less threatening, and attract less vigilance and challenge. The systematic and persistent denial of access to credit, accommodation or employment, for which reasons rarely have to be publicly given, is at least as effective in dealing with a thief or an embezzler as is arresting him and prosecuting him in the courts; but it is far less dramatic and less visible, and much more difficult to challenge. Yet such are the means at the disposal of private security. What is needed, therefore, in formulating policy with respect to the relationship between private security and privacy and civil liberties, is a fundamental re-examination of the legal institutions on which privacy and individual liberties depend for their protection.

This was the conclusion reached some years ago by Charles Reich (1964) who, in considering threats to liberty in an entirely different context, argued for the establishment of a 'new property' which would function in a similar way to the 'old property' in defence of individual liberty and privacy. This is precisely the challenge posed by the modern development of private security and private justice.

Accountability of Private Security

To a large extent, private security organizations have successfully resisted moves towards making them more publicly accountable (e.g., through licensing and other regulatory schemes) by stressing their 'privateness'. Thus, although licensing statutes relating to private security have been enacted in all but one of the provinces of Canada, their scope and impact are quite limited. Typically, such licensing

statutes apply only to the contract guard and investigation industries, thus leaving untouched the huge in-house and hardware sectors of private security. While there has been a discernible trend in government proposals to include other contract security businesses (e.g., alarm installers, locksmiths, armoured car companies, couriers, security consultants, and suppliers of guard dogs) within the terms of licensing statutes, and suggestions have been made in Ontario and Quebec to include some in-house security personnel under licensing schemes, the great majority of such proposals have not been realized to date.

Existing licensing statutes in Canada typically require employees as well as businesses to be registered, certified, or licensed. Criteria for licence eligibility almost always include the absence of any (or specified) convictions for criminal offences and of any substantial evidence indicating an applicant's bad moral character or 'unfitness' to be licensed. Citizenship and/or residence in the jurisdiction concerned, is a common prerequisite for a business licence. In addition, businesses are commonly required to be bonded or to hold liability insurance or both, and in many jurisdictions employees are also required to be bonded. Licensing authorities frequently have considerable powers of inspection of company books and other records, as well as powers to insist on minimum training standards, powers to approve company advertising materials, uniforms to be worn, and so forth, and to insist on the carrying and presentation of identification cards on demand by employees. Many can also determine whether employees will be permitted to carry firearms or other weapons, and under what circumstances.

Some, but by no means all, of the current statutes include explicit provisions for the receipt and disposition by the licensing authority of public complaints against licensees. Almost all licensing authorities have the power to suspend or revoke a licence for cause, in some cases only after a hearing, and many of the statutes now contain provisions allowing appeals from decisions of the licensing authority.

Authority to license private security personnel is commonly given to the public police, although in some jurisdictions it is given to a government department (e.g., an attorney-general's department) or to a

specially created licensing commission. Whichever body has this ultimate authority, practical realities usually dictate that the necessary investigations of licence applicants are, in fact, undertaken by the public police. In the light of the very considerable mutual dependence between the public police and private security, discussed above, it may be argued that such control over the licensing of private security personnel has the potential for placing the public police in a position of considerable conflict of interest.

In general, licensing statutes confer no additional powers on private security personnel, and indeed some of them contain provisions specifically prohibiting licensees from holding special constable appointments. In most jurisdictions, however, licensees are free to accept such appointments.

Despite the apparently expansive scope of these regulatory schemes, research into their adequacy and effectiveness in accomplishing their ostensible objectives has not produced encouraging results. A survey of such regulatory agencies in the United States, conducted in 1971, revealed that half of the responding agencies indicated that they did not have sufficient personnel to perform assigned functions adequately (Kakalik and Wildhorn, 1971, 3:54). Our own research into the regulation of private security in Canada resulted in similar conclusions (Stenning and Cornish, 1975, Ch. 6). Regulatory agencies were typically understaffed and underbudgeted, with the result that they could rarely perform more than the most minimum of licensing functions. Administration of such regulatory functions as inspections, competency tests, hearing and disposition of public complaints, and setting of standards for advertising, uniforms, and equipment was typically minimal or non-existent.

Our findings in this regard have recently been echoed, with respect to Ontario, by the findings of a Royal Commission which was established to look into violations of the confidentiality of government-held health information by police and private security personnel. Referring to the Registration Branch of the Ontario Provincial Police Force, which had statutory authority to license most of the private security firms and employees involved in the violations, Mr. Justice Krever, the Commissioner, concluded that:

...the Registration Branch seems to have viewed its function primarily as an automatic licensing bureau. It did not, it appears, consider itself a regulatory agency concerned with policing breaches, not only of the law relating to confidentiality, but of all the laws affecting the entire range of an investigator's activities (Ontario, Royal Commission of Inquiry...1980, vol. 2: 103).

Indeed, the Krever Commission itself experienced first hand some of the difficulties involved in attempting to hold private security personnel publicly accountable for their activities. Some of the executives of a private security company whose activities were being investigated by the Commission, and whose testimony was considered of critical importance in determining whether private security operatives were simply following established company policies in violating the confidentiality of health records through techniques of deception, could not be brought before the Commission as witnesses because, being executives of the U.S.-owned companies, they were beyond the Commission's jurisdiction (Ontario, Royal Commission of Inquiry...1980, vol. 1: 311-314).

To return to the regulatory agencies, however, a further problem arises from the fact that formal evaluations of their effectiveness are virtually unheard of in most jurisdictions. As a result, the gap between their mandate and their performance goes largely unnoticed and rarely causes serious problems for the agencies themselves, which make suitable accommodations with the industries they are established to regulate.

Shortage of manpower and resources, however, is not the only reason why such regulatory agencies usually achieve unimpressive results. For, in truth, the real problems associated with private security can rarely be economically or effectively controlled through such schemes. One of the more important of these problems is the fact that much contract private security work is low-status, largely unskilled, tedious and unrewarding work which attracts a highly transient labour force. Attempts to impose sophisticated regulatory controls over industries with such a high turnover of personnel are almost inevitably doomed to failure.

In some jurisdictions, governments have specifically eschewed such formal regulatory schemes. Most notable among these is the United Kingdom. In this jurisdiction, the security industry has largely been left to regulate itself; the only regulatory legislation is the Guard Dogs Act of 1975, which prohibits the use of unaccompanied guard dogs for security purposes. Self-regulation of private security in Britain is accomplished largely through the influence of the British Security Industry Association and the National Supervisory Council for Intruder Alarms. Although agency membership of the B.S.I.A. is numerically small, it has been estimated that its members represent "at least 80 per cent of the total number employed by security firms outside of manufacturing and perhaps account for some 90 per cent of the business (measured by turnover)" (Great Britain, Home Office, 1979, p. 4). In addition, many in-house security personnel belong to the International Professional Security Association. Each of these organizations attempts to establish and maintain minimum standards for its members with respect to recruitment, training, and employment of personnel, and the quality, advertising, and selling of security products and services. Membership in such organizations, however, is, of course, voluntary, and a large number of the smaller contract security businesses therefore fall outside the scope of this kind of industry self-regulation. A further important consideration is the fact that none of these organizations has an extensive enforcement capability equal to the standards it promotes. Because of these and other weaknesses in the comprehensiveness of self-regulation in the U.K., calls for the introduction of legislative regulation have persisted there.

It would be a great mistake, however, to conclude that government regulation through licensing legislation is the only form of accountability of private security. In particular, three non-government groups have the potential for exerting considerable influence over the activities of private security. The first of these are the clients of private security services. Since they pay directly for the security services they receive, they have the potential power to shape the future development of private security. This may be accomplished directly, in the case of contract security services, through the terms of the contract for security services (backed by the threat of moving to an in-

house system), and even more directly in the case of in-house security services. In practice, however, the competitive nature of most businesses has inhibited the co-operative effort required among clients to achieve minimum standards within private security, and self-interest has prevailed over the public interest. One category of clients who have especial potential for influencing standards within private security, however, is that of governments themselves, which are major clients of many contract security businesses. While some more or less successful attempts were made by the Federal Ministry of Supply and Services to impose minimum standards (e.g., of training) on private security companies with which they contracted during the mid-1970s, this encouraging initiative appears to have fallen by the wayside in recent years.

Another group which has great potential for influencing the nature and extent of security services provided by private security is the unions. As we have noted earlier in this paper, there is increasing evidence that unions are beginning to realize, and to exercise, their power to insist that security procedures and standards be included as items subject to collective bargaining. A particular advantage which some of the larger unions have in this regard is the fact that, like many of the businesses and security companies with whom they are negotiating, they are international in character. While this may strengthen their hand in negotiations, however, it has obvious implications which may frustrate the achievement of those standards of conduct and accountability on the part of private security which are consistent with Canadian attitudes and the Canadian way of life.

Finally, it must not be overlooked that the customers of the businesses for whom private security provides services have the potential to exert direct and indirect influence over the nature and quality of those services. To cite an obvious example, a retail company which wants to attract customers from its competitors cannot afford to adopt security procedures which are not acceptable to such customers (e.g., surveillance in private changing rooms, in the case of a company selling clothing). Customer reactions are thus an important determinant of any security system in an organization which must regularly deal with members of the public. Such reaction is routinely

used to determine such matters as the most appropriate dress and demeanour for security personnel, the kinds of security techniques which will be used, and what policies will be adopted with respect to the handling of the different kinds of incidents.

In addition to the formal systems of government regulation and the formal or informal accountability which is achieved through the exercise of influence by clients, employee organizations and various customers and interested segments of the public, which we have discussed above, there are also the questions of the current legal accountability and the efficacy of private security. Essentially, the legal accountability of private security may be accomplished in three major ways. For illegal conduct, private security personnel and their principals may be liable to criminal prosecution, to civil suits for damages or, if they are licensed, to administrative sanctions by the regulatory agency (up to, and including, withdrawal of the licence).

Criminal prosecutions of private security personnel and firms, for illegal conduct, have been rare, although by no means unheard of in Canada (e.g., the recent prosecutions in Ontario of the principals of Centurion Investigation Ltd.) The low visibility of much private security work, together with the significant role of private security bodies in controlling information, as well as their mutually dependent relationships with the public police (all discussed above), may well be thought to contribute towards an explanation of the rarity of prosecutions in this regard. For the same reasons, as well as because of the frequently prohibitive costs involved, successful civil suits against private security have not been particularly common in Canada. In addition, there is some evidence to suggest that private security often goes to considerable lengths in dealing with members of the public to protect itself against the possibility of civil liability. While this might suggest that the threat of civil liability acts, in practice, as an effective medium of accountability for private security, such a conclusion should, in our view, be treated with some caution, since it is based on the dubious assumption that most citizens who come into contact with private security know what their legal rights are, and what remedies are available against their abuse.

The experience of regulatory agencies in receiving and handling

complaints against private security licensees strengthens our scepticism in this regard. For the (admittedly inadequate) evidence so far available on the effectiveness of such regulatory complaint procedures is not encouraging, and suggests that one of the reasons why such mechanisms achieve such unimpressive results is that members of the public are generally not aware of their rights in dealing with private security, and are not aware that such complaint procedures are available to them. In addition, regulatory agencies typically do not go to any lengths to advertise the existence of such procedures, and are typically inadequately staffed and budgeted to 'police' their licensees effectively (Stenning and Cornish, 1975: 138-143).

A particular problem with respect to the civil liability of private security arises from the presently uncertain state of the law relating to vicarious liability (i.e., the liability of employers and other 'masters' for the wrongful acts of their employees or 'servants'). This branch of the law, which has been developed almost exclusively by the judges as part of their general elaboration of the common law, is presently such that it is increasingly difficult to assess with certainty who is legally liable for private security wrongdoing. The tremendous susceptibility of this question to manipulation through contractual arrangements whereby the 'buck' is passed from private security contractors to clients to insurance companies and back has, we have argued (see e.g., Freedman and Stenning, 1977: Ch. 4; and Stenning, 1981: Ch. 4), questionable consequences in terms of the public interest in ensuring that those who suffer harm or injury at the hands of private security have available to them adequate means of redress.

In sum, accountability of private security appears from the available evidence to be ad hoc, sporadic and uneven, although at present the available evidence is inadequate as a foundation for anything other than tentative conclusions in this regard. A major policy issue which arises in connection with this state of affairs, however, is that of the continued legitimacy of the major claim made by private security in favour of its immunity from more systematic and effective mechanisms of public accountability: that private security is essentially private in nature and therefore does not give rise to substantial concerns related to the public interest. Assuming that such

a claim may once have been justified, the question which arises now is whether its continued validity has been undermined by the ever-growing capacity of private security, combined with the modern realities of 'mass private property', which we have discussed above.

Assuming that private security must be subject to some public accountability in the public interest, a further policy question which arises relates to the adequacy of existing mechanisms of accountability to meet such public interest concerns. In this connection, the fact that most of the more effective forms of accountability of private security are informal, negotiated and private in nature, as well as local in character, is of particular relevance. Any inclination blindly to advocate increased government regulation as a solution to problems of accountability, however, must candidly recognize the inherent limitations of such schemes which derive from the nature of private security itself. As we have suggested many times in this paper, it seems to us likely that adjustments in the general laws (e.g., of property, employment and labour relations, contract, privacy and vicarious liability) may be more effective in achieving public accountability of private security than resort to further attempts at direct governmental regulation.

One final issue which arises with respect to accountability of private security relates to the special problems associated with private security personnel who have peace-officer status (e.g., through special constable status). The 'dual allegiance' of such personnel (to their employers as employees, and to the Crown as 'peace officers') serves to confuse further the already complex issue of their legal accountability. In our own research (see e.g., Freedman and Stenning, 1977: Ch. 4) we have consistently encountered confusion and uncertainty over this issue. The public interest, in our view, requires that some coherent and workable policy with respect to the distribution of legal responsibility for the actions of such truly 'private policemen' be formulated and implemented.

CONCLUSIONS

Underlying our entire discussion has been one overriding theme, sometimes explicit but always implicit: namely, that private security not only touches the lives of most Canadians, but has introduced the control and supervision of policing into places traditionally beyond the scope of public policing. Our notions of private ownership and privacy have, in the past, ensured that when a citizen is on private property, he or she has been relatively free from supervision and control. The increasing development of 'mass private property' and of 'private towns', with the concomitant presence of private security, is inevitably eroding these basic values. The restrictions which we have placed on the public police, especially in terms of their access to private property, have to date had much less application to the private police. These 'new police' have routine and almost unfettered access to private places, and usually command at least the implied consent of the people they supervise, to interfere with their traditional liberties in a variety of ways. Thus, as private security persons act to preserve both the public peace and the private peace, more of our activities are coming under the supervision, and often control, of some form of police.

It must not be forgotten that private security is in many respects not unlike other service organizations; it often does things for its clients by doing things to others whom its clients may perceive as competitors or enemies (Hughes, 1971: 422). This fact raises the question of the balance between demands for order, on the one hand, and individual liberties, on the other, and points to the necessity of

subjecting private security to the same kind of ongoing debate that we have hitherto reserved for the public police. In attempting to initiate such a debate, by identifying issues to be considered, we have of necessity had to focus our attention on a wide variety of potential dangers and problems posed by these phenomena. This review, viewed in isolation, might suggest that we are proposing that private security and private justice are to be viewed in entirely negative terms. As we have already hinted on several occasions in this paper, this is not our position. It must not be forgotten that private justice and private security flourish today partly as a result of dissatisfactions with the performance of the public police and the public criminal justice system. We should, therefore, not be blind to the possibility that such systems, because of their sensitivity to the environments in which they operate, and because of their diversity, may offer a more realistic and palatable resolution of social problems within those environments than our public criminal justice system as it currently operates, is able to do. For these reasons, private justice systems hold out the promise of some valuable insights into the kinds of innovations which might be desirable. They should, therefore, not simply be dismissed, as is all too often the case, as undesirable competition to the public criminal justice system, which should, at best, be reluctantly tolerated and strictly regulated or eliminated entirely. Indeed, in considering the nature of the promise of the future held out by private justice, it is perhaps useful to reflect upon the extent to which it has been able to fulfil well established aspirations associated with the criminal justice system, as well as the extent to which it in fact already expresses, and even exemplifies, contemporary proposals for reform within criminal justice.

Private security is an essentially preventive force which measures its success in policing, not in terms of the apprehension of offenders or the clearance of offences, but in its ability to prevent future losses from occurring. This was precisely the policing ideal which Sir Robert Peel enunciated for the public police. Today this ideal is closer to realization than it has ever been; however, it is through the auspices of private security rather than the public police that Peel's dream of a truly preventive police force has been most substantively accomplished.

As we move to the contemporary period, it will be recalled that

we noted that private justice is essentially a victim-oriented system. Its development has preceded the present concern with the plight of victims within the criminal justice process and provides a convenient model to be examined by those wishing to make the criminal justice process more sensitive and responsive to the needs of victims. To concern for victims, we could add what has recently been the darling of criminal justice policy makers and reformers, that is, diversion. For those willing to take off the narrow blinkers that an exclusive reference to the criminal justice system imposes, it is evident that private justice constitutes a huge and elaborate pre-trial diversion system which diverts an enormous number of cases that might otherwise have gone to the criminal justice system (for example, a great deal of employee theft) to an alternative justice process with very different procedures and sanctions.

To take one final and related example, there has been much talk of late about increasing community involvement in social control. One illustration of reform in this regard has been the public police's attempts to involve the public in a variety of crime-prevention strategies. Private justice is, of course, an example of a massive instance of community involvement in 'crime' prevention, albeit not initiated by the public police, which makes the police-initiated programs look quite modest by comparison.

These examples should leave no doubt that private justice should not simply be viewed in negative terms, but may very well represent an important, but hitherto unrecognized, reform movement through which publicly advocated reforms have found their expression in the private, rather than the public, sphere. There is a profound irony to this because the very reforms which have flourished so successfully within the private sphere, and which have been given little, if any, attention by reformers, appear to have a far less enviable record of success when their implementation in the public sector has been attempted.

These arguments about the potential of private justice to contribute solutions to problems that have been identified within criminal justice, raise a further point. In thinking about social control, its problems and its solutions, we all tend to think from within the frame of reference of criminal justice and have thus tended to be

captured by its perspective and rhetoric. As we have noted repeatedly, both explicitly and implicitly, in the course of this paper, the policy issues which private justice poses require a radical rethinking of traditional assumptions, not the least of which is the view that public justice is necessarily preferable to private justice. This rethinking goes beyond the substantive questions of controls and safeguards to the very procedures to be followed in responding to the policy issues we have identified. Policy making with respect to the criminal justice system has been seen as largely a matter internal to governments, with public debate limited largely to parliamentary debates. When the policy spotlight is turned to private justice, however, it is sheer illusion to think that policy formulation can take place in this manner. In developing policy with respect to private justice, it is imperative that the policy process be broadened to include those parties directly involved in private justice, in particular, unions, corporations and civil liberties organizations, all of which should be given a substantive voice in the policy-development process. In arguing for a broadening of the policy process in this way, we are not simply advocating a consultative model in which public officials occasionally consult with 'the public' through hearings and the like. Rather, all of those involved must be given a genuine and substantial role in the policy process.

Finally, in closing, it is important to remind anyone seeking to respond to private security that it has emerged as a result of structural changes related to the development of western economies, which seem unlikely to be reversed. It has not developed in response to policy initiatives, but is grounded in the very fabric of contemporary society. Consequently, any policy which suggests that its development can be reversed or that it can be controlled solely through legal tinkering, is likely to be no better than tilting at windmills. Private justice constitutes a major change in the structure of contemporary social control and presents a challenge to the legal framework and liberties of Canadian society. Meeting this challenge will require a willingness to re-examine fundamentally our ideas about justice, and the processes whereby we put those ideas them into effect.

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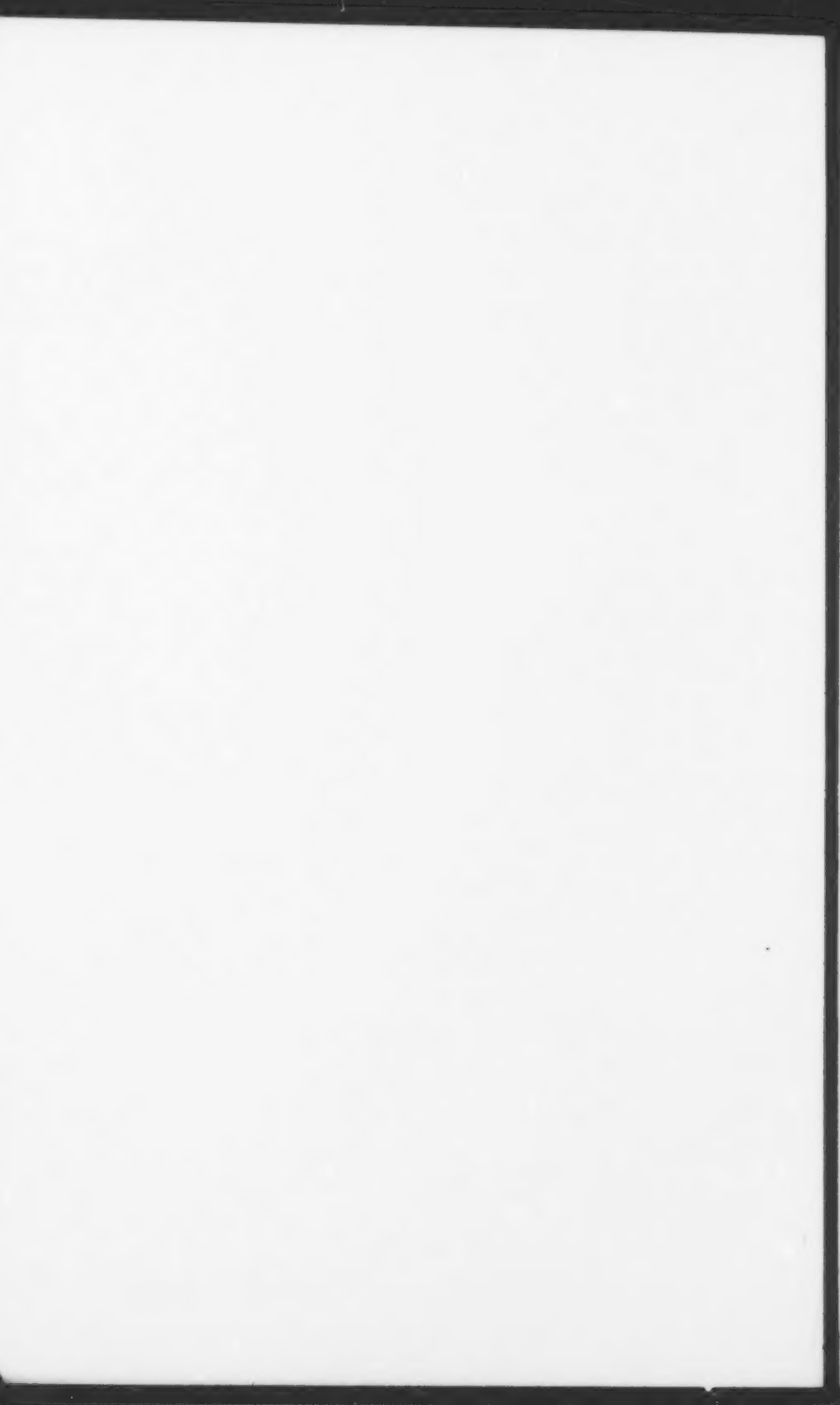
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